

MOSER LAW FIRM, PC



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August 21, 2023

VIA ECF

Hon. Joan M. Azrack, USDJ
United States District Court, Eastern District of New York
100 Federal Plaza
Central Islip, NY 11722

Re: *D'Aguino v Garda CL Atlantic, Inc*, Case No. 16-CV-00641 (JMA)(SIL)

Dear Judge Azrack:

The most recent so-ordered briefing schedule states that Plaintiffs' Motion to vacate and remand was to be served on June 15, 2023 and opposed by the Defendant no later than July 15, 2023. *See* ECF No. 131. The motion was timely served on June 15, 2023.

On June 30, 2023, the Defendant wrote a letter to the Court seeking a conference to discuss unspecified "procedural issues." *See* ECF No. 132. The letter did not give notice of the purpose of the conference or the legal grounds for requesting the relief sought. The letter sought a stay of the briefing pending the conference *sine die*, but did not state any legal grounds for seeking relief from the briefing schedule. *Id.*

The briefing schedule has not been modified or stayed, and the motion to vacate and remand has not been opposed. Garda has now taken the position that by virtue of its motion for a conference to discuss unspecified "procedural issues" (which has not been granted) it need not oppose Plaintiffs motion to vacate and remand. In other words, Garda is operating under the assumption that the Court will automatically grant its motion for a conference to discuss "procedural issues", and that the motion for a conference therefore acts as an automatic stay.

Garda insisted upon jurisdictional discovery as necessary to its opposition to the motion to vacate and remand. Exhaustive jurisdictional discovery was completed. The motion to vacate and remand was served. It is undisputed that complete diversity did not exist when the state action was commenced.

Therefore, we respectfully request that the motion (to be filed as ECF No. 134), be granted without opposition.

Respectfully submitted,

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